

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JANET SEGLE,

Plaintiff,

v.

PNC MORTGAGE, a division of PNC Bank,
National Association,

Defendant.

No. C10-5655 RJB

PNC'S REPLY IN SUPPORT OF
ITS MOTION TO DISMISS

Note on Motion Calendar:
February 25, 2011

PNC Mortgage, a division of PNC Bank ("PNC") files this reply in support of its Motion to Dismiss. [Dkt. 23]. The deadline for Plaintiff to file opposition papers to PNC's Motion to Dismiss was Tuesday, February 22, 2011. *See* Local Rule W.D. Wash. 7(d)(3). Plaintiff did not file opposition papers by February 22, and, in fact, has not filed any response to PNC's Motion at all. The Court should view Plaintiff's failure to file papers in opposition to PNC's Motion as an admission that the Motion has merit and should dismiss Plaintiff's claims. *See* Local Rules W.D. Wash. 7(b)(2); *see also* *Tillett v. City of Bremerton*, 2011 WL 9353, *11 (W.D. Wash. Jan. 3, 2011) (Bryan, J.).

The Court already afforded Plaintiff an opportunity to amend her Complaint to state a plausible claim. Plaintiffs' First Amended Complaint failed to set forth a single plausible cause of action against PNC. Plaintiff's "failure to cure [her pleading's] deficiencies by amendments previously allowed" counsels in favor of dismissing her claims with prejudice.

1 *Hunt Skansie Land, LLC v. City of Gig Harbor*, 2010 WL 2650502, *2 (W.D. Wash. July 1,
2 2010) (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962)). The Court should also dismiss
3 this matter with prejudice because amendment would be futile. *See Swartz v. KPMG, LLP*,
4 476 F.3d 756, 761 (9th Cir. 2007).

5 For these reasons and the reasons set forth in PNC's Motion, PNC respectfully
6 requests the Court to dismiss Plaintiff's claims with prejudice and enter judgment in its favor.

7 DATED this 25th day of February, 2011.

8 Davis Wright Tremaine LLP
9 Attorneys for Defendant PNC Mortgage, a
division of PNC Bank, National Association

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Janet Segle: seglej@gmail.com; jsegal@olypen.com
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Dated this 25th day of February, 2011.

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